



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

October 24, 2019

VIA EMAIL

Rafael A. Toro Ramírez
TORO & ARSUAGA, LLC
P.O. Box 11064
San Juan, Puerto Rico 00922-1064

Re: EPA Response to Proteco's Request to Use Trust Fund for Activities at the PROTECO Superfund Site in Peñuelas, Puerto Rico

Dear Mr. Toro Ramírez:

This letter responds to your request on behalf of your client, Proteco, for EPA's authorization for disbursement(s) of monies from a post-closure trust fund in order to fund certain activities at the PROTECO Superfund Site (the "Site"), as described in a proposal submitted to EPA on July 31, 2019. As you know, the post-closure trust fund was required pursuant to an amended consent decree in U.S. v. Proteco, et al., Civil No. 86-1698, entered on November 20, 1997. The amended consent decree limits use of post-closure trust fund monies to payment for post-closure activities. The post-closure trust fund was established for the benefit of EPA pursuant to a May 1998 Trust Agreement (the "Trust Agreement") that was entered into by your client, Proteco, as "Grantor."

Under the Trust Agreement, monies in the post-closure trust fund may be used to reimburse the Grantor (or other persons as specified by the EPA Regional Administrator) for EPA-approved post-closure expenditures at the Site. Thus, the costs of certain post-closure activities (including, e.g., repairing fencing, conducting maintenance, assessing and repairing certain monitoring wells, repairing the closure cover, designing and installing surface water controls, ditch and sedimentation basin cleaning, and assessing and repairing the leachate collection system), completed pursuant to an EPA-approved work plan, would be eligible for reimbursement pursuant to the Trust Agreement.

If your client (or another EPA-approved party) wishes to undertake post-closure activities in advance of a remedial investigation and feasibility study at the Site, EPA requests that a work plan addressing the aforementioned activities, along with the estimated cost of performing each activity, be submitted to EPA for review and approval. The work plan should also include

proposed controls to prevent releases of hazardous substances at the Site as well as procedures that will be implemented in the event that a release or threat of release of hazardous substances is identified (including immediate notification and coordination with EPA). Once a work plan has been submitted, EPA anticipates being able to assess the nature of the activities proposed (*i.e.*, as related to your client's post-closure obligations) and provide a determination on whether it will authorize disbursement(s) of monies from the post-closure trust fund to reimburse the Grantor (or another party, if applicable) for the funds expended on financing the work, pursuant to Section 4 of the May 1998 Trust Agreement.

If you have any questions regarding the technical aspects of this letter, please contact Ms. Luna at (787) 977-5844 or email her at Luna.Zolymar@epa.gov. Please direct all inquiries regarding legal questions to me at (212) 637-3197 or at Leshak.Andrea@epa.gov.

We appreciate your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrea Leshak', with a long horizontal flourish extending to the right.

Andrea Leshak
Assistant Regional Counsel

Cc: David Schneider (via email)